

## **REMARKS**

### **Status**

Claims 1-26 were pending in this application. In response to a restriction requirement, claims 1-10 and 22-25 were withdrawn from consideration. Accordingly, claims 11-21 and 26 were the subject of the present Office Action.

This amendment cancels claim 12 and adds new claim 27. Accordingly, it is claims 11, 13-21, 26 and 27 which are now at issue.

### **The Office Action**

In the Office Action mailed January 5, 2007, claims 11, 15, 17 and 20-21 were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent 6,277,056 of McBride. Claims 14 and 16 were rejected under 35 U.S.C. §103 as being unpatentable over McBride taken in view of U.S. Patent 5,921,894 of Eschenbach. Claim 19 was rejected under 35 U.S.C. §103 as being unpatentable over McBride taken in view of U.S. Patent 5,441,467 of Stevens.

Claim 26 was rejected under 35 U.S.C. §112, first paragraph, as not being enabled by the specification as originally filed. The Examiner indicated that claims 12 and 13 embody allowable subject matter and stated that they would be allowed if rewritten in independent form.

Applicant thanks the Examiner for the search, for the thorough explanation of the basis of the rejections and for the indication of allowable subject matter.

### **Claims 11 and 13-20 Are in Condition for Allowance**

By the present amendment, claim 11 has been rewritten to include the allowable subject matter of claim 12 therein. As such, claim 11 now specifies that the first link includes a rocker arm portion which projects therefrom in an angled relationship and further states that the

connector link is pivotally joined to the first link through the rocker arm. Claim 11 is allowable as are claims 13-20 and 26 which are all dependent thereupon.

**Claim 21 and New Claim 27 Are Allowable**

New claim 27 corresponds to claim 11 as originally filed, and will be discussed in light of the rejection of original claim 11. Original claims 11 and 21 were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent 6,277,056 of McBride. Applicant respectfully submits that the McBride patent does not show or suggest an arm motion system in accord with the language of these claims.

The arm motion assemblies of claim 27 and claim 21 each include a first link, a second link, and a connector link which extends between them. As detailed in both claims, the first link is pivotally supported upon a frame of an exercise device at a first pivot point, and the second link is pivotally supported upon the frame at a second pivot point which is spaced from the first pivot point. Both claims specify that a connector link extends between the first and second link and is pivotally joined to the first link at a first junction point and to the second link at a second junction point. Claim 21 specifies that a handgrip is affixed to either the first link, the second link or the connector link, and claim 27 specifies that a handgrip is affixed to the first link.

In rejecting these claims, the Examiner made particular reference to the device of Figure 1 of the McBride patent. The Examiner noted that the McBride patent shows an arm motion assembly having what was deemed "a pivotal first link" (which the Examiner notes is an unlabeled element in the drawing) extending between a connector link 70 and a projecting portion 32 of a foot link 26. The Examiner further noted that the McBride apparatus includes a second pivotal link 60 or 62 having handgrips connected thereto. As such, the structure of reference numeral 60 was deemed to be a first link with a handgrip, the structure of reference

numeral 70 a connecting link, and the unlabeled member a first link. Applicant concedes that the figure of McBride may properly be so construed, but respectfully submits that this construction is not in accord with the language of either claim 21 or claim 27 (original claim 11).

Applicant notes that claims 21 and 27 require that the first link be pivotally affixed to or supported by a first frame portion of the exercise device at a first pivot point. The unlabeled element of Figure 1 of McBride is not pivotally affixed to or supported by the frame of the exercise device. As detailed in the specification of McBride, the frame 12 includes a longitudinal base member 14, a forward upstanding post 22 and a rearward upstanding post 17 as well as a cross structure 20 extending therebetween (column 6, lines 43-51). The unlabeled link is not pivotally supported by any portion of the frame as is required by claims 21 and 27. Hence, this element is not shown in the McBride patent, and the rejection under 35 U.S.C. §102 is inappropriate.

Furthermore, there is no teaching in the McBride patent which would suggest that the apparatus therein could be modified so as to pivotally attach this unlabeled member to the frame. If such was done, the function of the apparatus would be clearly compromised.

Applicant further submits that the teaching of the specification of the McBride patent makes clear that the apparatus could not be construed in any other manner so as to approximate the elements of claim 21 or claim 27. In the McBride specification, for example at column 5, lines 53-55, reference numeral 60 is described as being an arm assembly and as is further described at column 5, line 65, this assembly is pivotally affixed to the upright portion 22 of the frame at pivot point 66. The arm assembly includes a lower extension portion 70. At column 6, lines 8-12, the arm assembly 60 is described as being coupled to the upper portion 32 of the pedal member by a coupling link 74. It appears from this description that the unlabeled member

is the coupling member, and the reference numeral 74 was omitted from the drawings. Under this teaching, the assembly 60 could be considered to be the first link, pivotally affixed to the frame and including a handgrip. The element 74 (unlabeled in the drawing) is a coupling member, and the pedal member 26 could be considered to be a second link. However, the pedal member 26 is in no way affixed to the frame at a second pivot point. As set forth at column 5, lines 9-14 of McBride:

Pedal member 26 is coupled to the crank mechanism 50 by means of a first coupling portion of the pedal member 26 which provides a journal connection between an axial crank rod 56 extending from the end of crank arm 52 and the rear end 30 of the elongated portion 28.

Thus, in summary, under the Examiner's interpretation of the drawings, or any other reasonable interpretation of the drawings and specification, the McBride patent in no way shows any system in which a first link and a second link are pivotally affixed to the frame of an exercise device at spaced apart pivot points and joined to one another by a coupling member. Therefore, the arm motion assemblies as defined in claim 21 and claim 27 are not shown or suggested in the McBride patent. Reconsideration and withdrawal of this rejection is respectfully requested.

#### **The Rejections under 35 U.S.C. §103**

Claims 14, 16, 18 and 19 were all rejected over the McBride patent taken in combination with various prior art. These claims are all dependent on claim 11. By this amendment, claim 11 has been rewritten to embody allowable subject matter; hence, these claims are likewise allowable.

### **The Rejection of Claim 26**

Claim 26 was rejected under 35 U.S.C. §112, first paragraph, as not being enabled by the specification. Claim 26 is dependent on claim 11 and further specifies the arm motion achieved by the claimed apparatus. It is the Examiner's position that this claim as originally presented is not fully supported in the specification since lateral movement of the user's hands is essential to achieving the specified action wherein the user's arm pivots primarily at the shoulder joint, and structure for achieving such lateral motion is not enabled in the disclosure.

By the present amendment, claim 26 has been rewritten to further specify that the path of motion of the user's hands is curved relative to the horizontal plane and to the vertical plane so that the user's arm primarily pivots at the shoulder joint. This dual curvature is disclosed and supported in the specification as originally filed, for example at page 16, lines 10-14. This arm motion is also illustrated in Figure 1 and Figure 9. The specification as originally filed provides support sufficient to enable one of skill in the art to prepare an embodiment of the claimed device capable of achieving this described and illustrated motion. In that regard, claim 11, from which claim 26 depends, specifies the basic structural elements of the arm motion assembly. The specification, at page 16, and in particular at lines 14-23, describes various mechanical arrangements which could achieve the Figure 9 lateral motion. These include options of angling the first and second pivot points relative to the longitudinal axis of the device, using ball joints, universal joints or the like or flexible hinges such as living hinges. As further detailed, the laterally curved path of travel could also be achieved by pivotally joining the handles to their appropriate links. In view of the amendment to the claim, and particular reference to the specification, Applicant submits that the rejection under 35 U.S.C. §112, first paragraph, is overcome.

**Conclusion**

By the present amendment, Applicant has rewritten claim 11 to embody allowable subject matter. Applicant has also amended claim 26, dependent on claim 11, and has pointed to language in the specification which supports and enables the claim. Accordingly, claim 11 and all claims dependent thereupon are allowable. Applicant has also pointed out how and why independent claims 21 and 27 recite subject matter neither shown nor suggested in the prior art. These claims are also in condition for allowance.

In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. Any questions, comments or suggestions the Examiner may have which may place the application in still better condition for allowance should be directed to the undersigned attorney.

Respectfully submitted,

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